

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
Eastern Division**

**ALPS PROPERTY & CASUALTY
INSURANCE COMPANY,**

Plaintiff,

v.

**BREDAHL AND ASSOCIATES, P.C.;
JEFF S. BREDAHL, ESQ.; LEGACY
STEEL BUILDING, INC.; WANE
ENGKJER; and BRUCE ENGKJER**

Defendants.

Case No. 3:19-cv-00195-ARS

**PLAINTIFF ALPS PROPERTY & CASUALTY INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff ALPS Property & Casualty Insurance Company (“ALPS”), pursuant to Fed. R. Civ. P. 56 and D.N.D. Civ. L. R. 7.1(A), respectfully moves the Court for an Order granting summary judgment in favor of ALPS on its claims for declaratory relief against Defendants Bredahl and Associates, P.C. (“Bredahl Firm”), Jeff A. Bredahl (“Bredahl” and together with the Bredahl Firm, “Bredahl Defendants”), Legacy Steel Building, Inc. (“Legacy Steel”), Wane Engkjer (“W. Engkjer”), and Bruce Engkjer (“B. Engkjer” and together with Legacy Steel and W. Engkjer, “Legacy Defendants”)¹.

For the reasons described in the supporting memorandum filed contemporaneously herewith, there is no genuine dispute as to any material fact and ALPS is entitled to judgment as a

¹ ALPS will refer to the Bredahl Defendants and the Legacy Defendants collectively as “Defendants”.

matter of law on its complaint for declaratory relief against Defendants (ECF No. 1). As the factual basis for this motion (“Motion”), ALPS relies on:

- (1) pleadings and other filings in the above-captioned case, which ALPS refers to by ECF Document Number (“ECF No. __”) in the docket;
- (2) pleadings and other filings in the suit styled *Legacy Steel Building, Inc., et al. v. Bredahl, et al.*, Case No. 09-2019-CV-01164 (Dist. Ct. Cass Cty., N.D.) (“Legacy Suit”), including, but not limited to, the Legacy Defendants’ January 8, 2020 First Amended Complaint, a true and correct copy of which is attached as Exhibit A;²
- (3) pleadings and other filings in the suit styled *Elite Inspection Services, Inc. v. Legacy Steel Building, Inc., et al.*, Civil Case No. 53-2015-CV-01235 (Dist. Ct. Williams Cty., N.D.);
- (4) Lawyers Professional Liability Insurance Policy No. ALPS20836-1 issued by ALPS to the Bredahl Firm for the policy period October 1, 2017 to October 1, 2018 (“Policy”) (ECF No. 1-2);
- (5) the Affidavit of Rob Tameler in Support of ALPS’s Motion for Summary Judgment (“Tameler Affidavit”), attached as Exhibit B;
- (6) Exhibits C through J, true and correct copies of which are attached to this Motion and authenticated by the Tameler Affidavit; and
- (7) other matters of record.

² Pursuant to Rule 201 of the Federal Rules of Evidence, the Court may take judicial notice of facts: (i) “generally known within the [Court’s] territorial jurisdiction”; or (ii) which “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). This rule allows the Court to take judicial notice of documents filed in related state court proceedings. *See, e.g., Graham v. Catamaran Health Solutions LLC*, 940 F.3d 401, 405 n.1 (8th Cir. 2017); *Thompson v. R.J. Reynolds Tobacco Co.*, 760 F.3d 913, 917-18 (8th Cir. 2014); *Levy v. Ohl*, 477 F.3d 988, 991 (8th Cir. 2007); *DeGroot v. Stutsman Cty. Park Bd. Comm’rs*, No. 3:06-cv-71, 2007 WL 295615, at *1-*2 (D.N.D. Jan. 25, 2007).

WHEREFORE, ALPS moves the Court for an Order granting summary judgment in favor of ALPS and against Defendants declaring: (1) the Policy does not afford coverage to the Bredahl Defendants for the Legacy Suit; (2) ALPS has no duty to defend or indemnify the Bredahl Defendants under the Policy with respect to the Legacy Suit; and (3) ALPS is entitled to an award³ in the amount of attorneys' fees and costs ALPS paid to defend the Bredahl Defendants against the Legacy Suit.

Dated: March 17, 2020

/s/ Kevin D. Hartzell

Kevin D. Hartzell (pro hac vice)
Brooke H. McCarthy (pro hac vice)
KUTAK ROCK LLP
1650 Farnam Street
Omaha, NE 68102-2186
Telephone: (402) 346-6000
Email: kevin.hartzell@kutakrock.com
Email: brooke.mccarthy@kutakrock.com

J. Crisman Palmer
Gunderson Palmer Nelson Ashmore LLP
506 Sixth Street
Post Office Box 8045
Rapid City, SD 57709
Telephone: (605) 342-1078
Email: cpalmer@gpna.com

Attorneys for Plaintiff ALPS Property & Casualty Insurance Company

³ If the Court determines ALPS is entitled to an award in the amount of attorneys' fees and costs ALPS paid to defend the Bredahl Defendants against the Legacy Suit, ALPS will submit documentation supporting the amount of the award, a calculation of which ALPS provided to Defendants in ALPS's February 14, 2020 Rule 26(a)(1) Initial Disclosures. As of the date of this Motion, ALPS has paid \$20,601.47 in attorneys' fees and costs in the defense of the Bredahl Defendants against the Legacy Suit, fees and costs which continue to accrue.

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020, I filed the foregoing ALPS's Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system, which will provide notice to:

Barton J. Cahill, Esq.
402 Center Avenue, Suite 200
Post Office Box 1238
Moorhead, MN 56561
Email: bcahill@cahill-lawyers.com

Counsel for the Bredahl Defendants

Paul A. Sortland, Esq.
SORTLAND LAW OFFICE, PLLC
431 South Seventh Street, Suite 2415
Minneapolis, MN 55415
Email: sortland@sortland.com

Counsel for the Legacy Defendants

/s/ Kevin D. Hartzell

Kevin D. Hartzell